



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 25, 1996

Ms. Barbara L. Quirk
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR96-1947

Dear Ms. Quirk:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101347.

The local Registrar of Vital Statistics for Bexar County (the "registrar") received a request for copies of a "birth summary list" that the registrar has been supplying. You claim that the parents' names and addresses and the sex of the registrant are excepted from disclosure under section 552.115 of the Government Code.¹ You have submitted a sample of the requested information. We have considered the registrar's arguments and the submitted samples.

Section 552.115 provides that a "birth or death record maintained by the bureau of vital statistics of the Texas Department of Health" may be withheld. The records here do not appear to be maintained by the bureau of vital statistics of the Texas Department of Health but rather by a local registrar. Thus, we do not believe that the registrar may withhold the requested information under section 552.115. *See* Open Records Decision 338 (1982) (city health department may not withhold birth records); *cf.* Open Records Decision Nos. 486 (1987) (construing predecessor provision), 307 (1982) (county clerk may not withhold birth records).

Moreover, the records here are not "birth records" that come within the scope of section 552.115. In Open Records Decision No. 486 (1987), this office concluded that

¹For purposes of this ruling, we are assuming that the registrar has the information that previously appeared in the birth summaries, the names and addresses of the parents and the sex of the child, in a database that is subject to manipulation. *See* Gov't Code § 552.231. If the registrar does not have access to this information in a form that can be manipulated pursuant to section 552.231, the registrar need not provide the information in the form requested. Open Records Decision No. 467 (1987).

section 552.115 does not apply to birth and death summaries, explaining:

Copies of actual birth and death certificates clearly create greater opportunity for abuse in falsifying identity than the opportunity for abuse created by a summary list of births and deaths. Foreclosing the opportunity for abuse through falsification of identity is one of the primary purposes of the amendment. The bill analysis states the purpose of the amendment to be 'to prevent a criminal from assuming the identity of a deceased person and to keep birth records confidential.' Both birth and death certificates are subject to the abuse of falsification.

Open Records Decision No. 486 (1987) at 2. Therefore, we do not believe that the requested summaries may be withheld under section 552.115.

The registrar next claims that provisions of the Texas Administrative Code make the requested information confidential. Generally, absent specific authority, a governmental body may not promulgate a rule designating information as confidential so as to bring it within section 552.101. Open Records Decision Nos. 484 (1987), 392 (1983), 216 (1978). However, in Open Records Decision No. 596 (1991), we concluded that the Department of Health (the "department") was authorized by statute to promulgate rules to make birth and death certificates confidential in the hands of local registrars. Open Records Decision No. 596 (1991) at 4, n.5. Consequently, the department adopted rules which provide, in part:

A local registration official may prepare a summary birth or death index for public use. . . . The index shall consist of the last, first, and middle name, if any, of the registrant, the date of the event, the county in which the event occurred, and the file number of the record. . . . If the record falls into the open record category, a general index may be made available for public use. This index shall be alphabetical by surname of the registrant. In addition to the previously mentioned information, names of the parents may also be listed. The fact of adoption or paternity determination must not be disclosed nor be able to be broken by any such indexes.

25 T.A.C § 181.10(c). We believe that this section limits the type of information that can be listed by a local registrar on a summary birth index. We believe that the purpose behind section 552.115, that of preventing fraud, is one of the purposes behind this rule and that not listing the parents' names and addresses advances this purpose. Therefore, we conclude that the requested information is confidential and must not be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue

under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 101347

Enclosures: Submitted documents

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